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Robert L. Olender *
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April 12, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
The Portals, TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

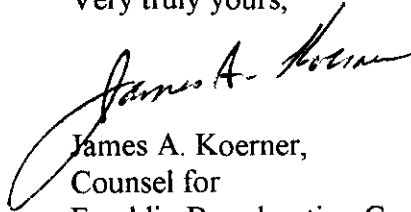
Re: MM Docket No. 02-40 /
RM 10377

Dear Mr. Caton:

On behalf of Franklin Broadcasting Co., Inc., there are transmitted herewith an original and four (4) copies of its Comments and Counterproposal in the above-referenced rule making proceeding looking toward amendment of the FM Table of Allotments.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner,
Counsel for
Franklin Broadcasting Co., Inc.

cc: Ms. Mollie Evans

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Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

APR 12 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 02-40
Table of Allotments) RM-10377
FM Broadcast Stations)
(Goldsboro and Smithfield, North Carolina))

TO: Chief, Allocations Branch

COMMENTS AND COUNTERPROPOSAL

Franklin Broadcasting Co., Inc., by its attorneys, hereby submits its comments in the above-captioned rule making proceeding in response to the Notice of Proposed Rule Making, DA 02-409, released February 22, 2002 ("NPRM"), and advances a counterproposal to the proposed amendment to the FM Table of Allotments contained therein.

Franklin Broadcasting Co., Inc. is the licensee of Radio Station WHLQ ("WHLQ"), operating on Channel 273A at Louisburg, North Carolina. WHLQ proposes to amend the FM Table of Allotments by reallocating Channel 273A from Louisburg to Rolesville, North Carolina and having its license modified accordingly.

Like New Age Communications, Inc. ("WKIX"), WHLQ seeks to invoke the provisions of Section 1.420(i) of the Commission's rules which permits the modification

of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. The Engineering Exhibit attached hereto demonstrates that the proposal advanced herein is mutually-exclusive with the current WHLQ authorization.

The priorities in FM allotments are governed by *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).¹ The NPRM asserts that WKIX would provide Smithfield with its first full-time local aural transmission service. The NPRM also notes that AM broadcast station WMPM is also licensed to Smithfield as a daytime station. Under the FM allotment priorities, this falls under priority 4.² On the other hand, the counterproposal of WHLQ would bring a first local service to Rolesville, bringing it under priority (3).

This counterproposal will not deprive Louisburg of its only station. Commonly-owned station WYRN (AM) will remain licensed to Louisburg.

The Engineering Exhibit attached hereto demonstrates that the counterproposal advanced herein meets all of the Commission's requirements with respect to minimum mileage separations and coverage of the proposed city of license.

Rolesville also meets all of the requirements for a community for allotment purposes. Rolesville is an incorporated town with 2000 population of 907. The population is scheduled to grow dramatically. A new development, Stratford

¹ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

² See *Grants, Milan and Shiprock, NM*, 16 FCC Rcd. 20323, 20324 (2001) (with daytime-only station remaining in Milan, FM proposal would fulfill priority four). See, also, *Paonia and Olathe, OH*, 16 FCC Rcd. 22109, 22112 (2001) (since non-commercial educational FM station is already licensed to Paonia, proposal is for a second local service triggering priority four).

Village/Villages of Rolesville, will include 775 new homes. Local news stories say that the population will double.

Rolesville is the second oldest town in Wake County, located approximately 14 miles northeast of Raleigh. Rolesville was named for an early prominent citizen, William (Billy) Roles, a landowner, merchant, cotton broker and cotton gin owner, postmaster, deacon and trustee of the Baptist Church and founder of the first local school. The town was first incorporated in 1837. The town limits were marked by four cornerstones and enclosed by fencing. Three of the cornerstones still remain. As a major north-south route between Richmond and Fayetteville, this was a stage stop with “Roles Half-Way House” and “Roger’s Tavern” providing rest, refreshment and changes of horses. Early travelers on the route included French General and Revolutionary hero, the Marquis de Lafayette, his son George Washington Lafayette and his secretary, La Vasseur, as they traveled to Raleigh for a celebration on March 2 and 3, 1825.

Rolesville was incorporated a second time on February 28, 1941, and the town boundaries were extended by the North Carolina General Assembly on March 14, 1945. Since 1903, town officials have included a Mayor, Clerk, Treasurer, Tax Collector and a two member Board of Alderman. The 1941 incorporation changed the officials to a Mayor, Clerk and a five member Board of Commissioners. Attached is a list of the current Town Board and other Town officers. A Police Department was added in 1941, with a single Chief of Police position. At the present time there are five full time police officers and several auxiliary officers.

Parks and recreation services are provided by a volunteer commission with members from the town and local community. Services include children and adult

athletic programs, art programs and park development. A major fundraiser for these activities is an annual Recreation Day held in April.

The Rolesville Rural Fire Department was organized in 1958 with 28 volunteers. Today there are 35 volunteers. The Rolesville Emergency Medical Service was founded in 1995; all of its members are volunteers except for a Chief, which is a paid full time position.

A new Rolesville Elementary School was constructed in 1991 on the town's Main Street.

Redford Place Shopping Center was built in 1992. Current tenants include a grocery store, hardware store, gift shop and a bank. A recent trip down Main Street revealed businesses including Privette Insurance Agency, McDonalds, Wiggins Monument, Rolesville Elementary School, All Creatures Animal Clinic, Central Carolina Bank, Food Lion, CVS Pharmacy, Exxon Service Center, Amoco Service Center, ACE Hardware, Los Tres Magueyes Restaurant, Dollar General, Thee Salon, Subway, Krispy Kreme Doughnut, McCracken Oil Company, Internal Medicine, Jones Brothers Hardware & Flooring, Side Street Antiques, New Life Church, and Pine Glo Industry.

Rolesville has its own Chamber of Commerce. Attached hereto is a list of the current officers.

As demonstrated in the Engineering Exhibit, only a small portion of the Raleigh Urbanized Area will receive 70 dbu service from this proposal. Thus a *Tuck* analysis is not necessary.³

³ *Faye and Richard Tuck*, 3 FCC Rcd. 5374 (1988); see, also, *Detroit Lakes and Barnesville, Minnesota*, 16 FCC Rcd. 22581 (2001).

WHLQ hereby states its intention to apply for the facility change here requested in the event this counterproposal is granted, and thereafter to construct and operate the station after grant of the application.

On the basis of the foregoing it is respectfully requested that the FM Table of Allotments be amended to delete Channel 273A from Louisburg, North Carolina and to allot it to Rolesville, North Carolina.

Respectfully submitted,

FRANKLIN BROADCASTING CO., INC.

By: 

James A. Koerner
It's Attorney

April 12, 2002

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ALAN E. GEARING, P.E.

MULLANEY ENGINEERING, INC.
9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

301 921-0115 Voice
301 590-9757 Fax
mullengr@aol.com E-mail

ENGINEERING EXHIBIT EE-RM:

**COMMENTS AND COUNTERPROPOSAL
MM DOCKET 02-40 - GOLDSBORO & SMITHFIELD, NC**

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**ADDITION OF
DELETE Ch. 273A TO LOUISBURG, NC
ALLOT Ch. 273A TO ROLESVILLE, NC**

APRIL 4, 2002

**ENGINEERING STATEMENT PREPARED ON BEHALF OF
FRANKLIN BROADCASTING COMPANY, INC.
LICENSEE OF WHLQ (FM)
CHANNEL 273A - LOUISBURG, NORTH CAROLINA**

Facility ID: 22322

ENGINEERING EXHIBIT EE-RM:

**COMMENTS AND COUNTERPROPOSAL
MM DOCKET 02-40 - GOLDSBORO & SMITHFIELD, NC**

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**ADDITION OF
DELETE Ch. 273A TO LOUISBURG, NC
ALLOT Ch. 273A TO ROLESVILLE, NC**

TABLE OF CONTENTS:

1. Declaration of Engineer
2. Narrative Statement
3. Channel Allocation Studies
4. Figure 1, Ch. 273A - Rolesville, NC - Special Ref Site.
5. Figure 2, Map Showing Proposed City Grade Service.

Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by Franklin Broadcasting Company, Inc., to prepare the instant engineering exhibit in support of Comments and Counterproposal concerning a rule making petition to amend the FM Table of Allotments MM Docket 02-40 Goldsboro and Smithfield, North Carolina.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

Executed on the 4th day of April 2002

ENGINEERING EXHIBIT EE-RM:

**COMMENTS AND COUNTERPROPOSAL
MM DOCKET 02-40 - GOLDSBORO & SMITHFIELD, NC**

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**ADDITION OF
DELETE Ch. 273A TO LOUISBURG, NC
ALLOT Ch. 273A TO ROLESVILLE, NC**

NARRATIVE STATEMENT:

This engineering statement has been prepared on behalf of Franklin Broadcasting Company, Inc. ("Franklin"), licensee of Radio Station WHLQ, at Louisburg, North Carolina (Facility ID 22322). This engineering exhibit supports Comments and Counterproposal in response to a Notice of Proposed Rule Making (NPRM) in MM Docket 02-40 at Goldsboro and Smithfield, North Carolina.

Franklin counterproposes that Channel 273A should be deleted at Louisburg and allotted to Rolesville, North Carolina and to modify the license of WHLQ accordingly. This will result in a **first local aural service** and eliminate a grandfathered short spaced allotment. In order to accomplish this it is necessary to deny the request by New Age Communications, Inc., licensee of WKIX (FM) to move Ch. 272A from Goldsboro to Smithfield, NC as a **second local aural service**.

The city of Louisburg, NC (3,111 persons, 2000 Census) which is located in Franklin County will continue to be served by one aural service (WYRN AM 1480 kHz) and grant of this proposal will result in the **first aural service** to Rolesville, NC (907 persons, 2000 Census) which is located Wake County.

WHLQ wishes to point out that the new city of license it seeks is on its existing channel with a proposed location which is less than the separation specified by Section 73.207 and, thus, is mutually exclusive with its existing authorization in accordance with Section 1.420(i) of the rules.

The proposed reference point is not within 290 kilometers (180 miles) of a United States Border and, therefore, foreign concurrence is not required.

COUNTERPROPOSAL

For the purposes of this rule making the allotment of **Ch. 273A** will rely upon the special reference coordinates for **Rolesville, NC**.

| | | | | |
|---------------|-----|-----|-----|--------|
| N. Latitude: | 36° | 00' | 55" | NAD-27 |
| W. Longitude: | 78° | 33' | 25" | |

The city reference point for Rolesville, NC is located 13.3 km southeast (N-137-E) of the special reference point. The city coordinates are:

| | | | | |
|---------------|-----|-----|-----|--------|
| N. Latitude: | 36° | 55' | 39" | NAD-27 |
| W. Longitude: | 78° | 27' | 25" | |

The proposed special reference site will provide an unobstructed view of the city of license, Rolesville and is located close enough to serve the entire community with the required 3.16 mV/M or 70 dBu contour. For allotment purposes a 16 km circle is used for city grade compliance.

Channel Allocation Studies

Figure 1 is a channel study demonstrating that the proposed use of the specified channel is in full compliance with the FCC's separation requirements. The study indicates the actual & required separation in kilometers to all licenses, construction permits, applications, vacant allocations and pending rule makings. The proposed reference point exceed all of these minimum separations provided the move of Ch. 272A to Smithfield, NC is denied.

Figure 2 is a map which illustrates the existing & proposed 70 dBu contours. In addition, the maps also shows the location of Rolesville and the location of two nearby urbanized areas (UA). The proposed allotment point does not serve any portion of the Durham UA and only a small portion of the Raleigh UA. It should be noted that no 70 dBu service is provided to the city of Raleigh itself but only to the northeastern extremes of the UA. Less than 20% of the population within the Raleigh UA receives city grade service.

Public Interest Showing

Denial of the Smithfield rule making will permit the allotment of a **first local service** to the city of Rolesville, NC. The re-allotment of Ch. 273A from Louisburg, NC (3,111 persons) to Rolesville, NC (907 persons) will permit WHLQ to provide a first local service. WHLQ presently operates as a **short spaced** Class A facility. The proposed change in community & continued operation with Class A facilities will permit WHLQ to serve more population and will eliminate the short spacings. WHLQ's CP is presently authorized to provide a 60 dBu service to 136,145 persons. WHLQ anticipates construction of a maximum Class A facility which will potentially provide 60 dBu service to 445,000 persons (2000 Census). This represents a **226.9% increase** in population.

The proposed change of site **does not create any white, grey or under-served area.** It has been determined that at least five existing commercial FM services (WYFL/223C, WQDR/234C, WTRG/264C, WRAL/268C & WRDU/291C) provide a 60 dBu or better signal **to the entire** 60 dBu contour of WHLQ's licensed facility and of its proposed facility.

Franklin has presented a plan which is a more efficient use of the limited frequency spectrum in & around North Carolina. Based upon the above information, Franklin believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest.

SUMMARY

Franklin Broadcasting Company, Inc., licensee of Radio Station WHLQ, at Louisburg, North Carolina (Facility ID 22322) requests that the FM Table of Allotments be amended as presented herein. Franklin counterproposes that Channel 273A should be deleted at Louisburg and allotted to Rolesville, North Carolina and to modify the license of WHLQ accordingly. This will result in a **first local aural service** and eliminate a grandfathered short spaced allotment. In order to accomplish this it is necessary to deny the request to move Ch. 272A to Smithfield, NC as a **second local aural service**.

Franklin requests that the Commission's FM Table of Allotments be revised as follows:

| Community | Present | Proposed in NPRM | Counterproposal |
|------------------|----------------|-----------------------------|------------------------|
| Goldsboro, NC | 245C, 272A | 245C | 245C, 272A |
| Smithfield, NC | -- | 272A | denied |
| Louisburg, NC | 273A | [273A] | - - - |
| Rolesville, NC | - - - | - - - | 273A |

[] - item is not specifically in pending NPRM

Based upon the information presented herein, Franklin believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest. If granted, WHLQ will quickly file an application for construction permit.

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

April 4, 2002.

WHLQ-FM - LOUISBURG to ROLESVILLE, NC
APRIL 2002 MM DOCKET 02-40

| | | |
|-------------------------------------|------------------|-----------------|
| REFERENCE | CLASS = A | DISPLAY DATES |
| 36 00 55 N | | DATA 04-04-02 |
| 78 33 25 W | Current Spacings | SEARCH 04-04-02 |
| ----- Channel 273 - 102.5 MHz ----- | | |

| Call | Channel | Location | | Dist | Azi | FCC | Margin | |
|--------|-----------|----------------|----|--------|-------|-------|--------|------|
| ----- | | | | | | | | |
| | 273A | ROLESVILLE | NC | 13.27 | 137.3 | 114.5 | | City |
| WHLQ | LIC 273A | Louisburg | NC | 19.73 | 53.7 | 114.5 | -94.77 | |
| RADD | ADD 272A | Smithfield | NC | 63.67 | 161.1 | 71.5 | -7.83 | MX |
| WERXFM | LIC 273C1 | Columbia | NC | 199.67 | 92.5 | 199.5 | 0.17 | |
| WWMY | LIC 275A | Raleigh | NC | 30.73 | 216.9 | 30.5 | 0.23 | |
| WKIX | LIC 272A | Goldsboro | NC | 78.42 | 150.9 | 71.5 | 6.92 | Lic |
| WIOZFM | LIC 273A | Southern Pines | NC | 127.12 | 221.2 | 114.5 | 12.62 | |
| RDEL | DEL 272A | Goldsboro | NC | 84.49 | 144.1 | 71.5 | 12.99 | |

1. Smithfield NPRM for 272A must be denied.

CH. 273A FIRST LOCAL COMMERCIAL SERVICE TO ROLESVILLE, NC

273A - ROLESVILLE, NC - SPECIAL REF SITE

Counterproposal MM Docket 02-40
Goldsboro & Smithfield, North Carolina
Franklin Broadcasting - Louisburg to Rolesville

MULLANEY ENGINEERING, INC.
GAITHERSBURG, MARYLAND

FIGURE 1
APRIL 2002

FIGURE 2 - CITY GRADE COVERAGE

MM Doc 02-40 - Counterproposal - Rolesville, NC

Durham & Raleigh are both
designated Urbanized Areas.

WHLQ LIC
70 dBu

ROLESVILLE

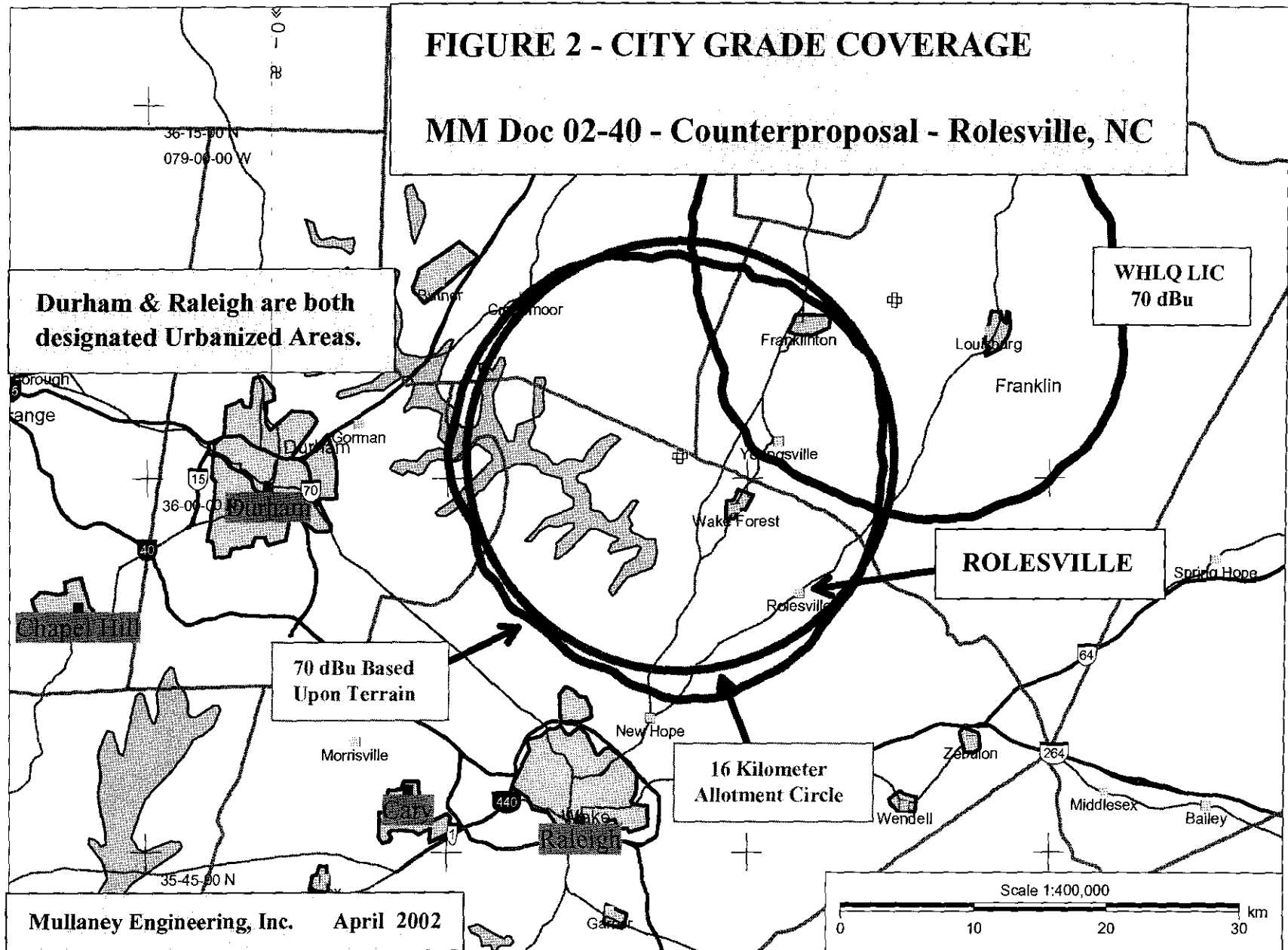
70 dBu Based
Upon Terrain

16 Kilometer
Allotment Circle

Mullaney Engineering, Inc. April 2002

Scale 1:400,000

0 10 20 30 km



ATTACHMENT A

TOWN OF ROLESVILLE

**P.O. Box 250
Rolesville, N. C. 27571**

TOWN BOARD

**4 YR. TERMS
EXPIRE ON:
12-31-03**

| | | | |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|----------|
| Mayor | Nancy Kelly PO Box 34 Rolesville, NC 27571 nkelly@mindspring.com | (H) 556-2248 | |
| Mayor Pro-Tem | Frank Eagles 205 South Main Street Rolesville, NC 27571 frank.eagles@ncmail.net | W) 733-7773 (H) 556-7610 (F) 556-0917 | 12-31-05 |
| Commissioner | Frank Hodge 502 North Main Street Rolesville, NC 27571 wfhcora@gateway.net | (H) 556-3916 | 12-31-03 |
| Commissioner | Betty Whitaker P. O. Box 1 Rolesville, NC 27571 | (W) 556-2996 (H) 556-5253 | 12-31-05 |
| Commissioner | Pat Wharton 220 West Young St. Rolesville, NC 27571 Rwharton@nc.rr.com | (H) 556-5125 | 12-31-03 |
| Commissioner | Ronnie Currin 304 Teresa Drive Rolesville, NC 27571 ronniecurren@prodigy.net | (H) 554-2134 | 12-31-05 |
| ***** | | | |
| Town Manager | Don Dubay don.dubay@ncmail.net | (W) 556-3506 | |
| Attorney | Jonathan Koffa PO Box 386 229 N. Arendell Ave. Zebulon, NC 27597 | (W) 404-2122 (F) 404-0865 | |
| Chief of Police | James F. Green, Jr. rolesville@mindspring.com | (W) 556-7226 (P) 510-3801 | |
| Town Clerk | Lynn House lynn.house@ncmail.net | (W) 556-3506 | |

ATTACHMENT B

**Rolesville Chamber of Commerce
PO Box 518
Rolesville, NC 27571**

2002-2003 Officers

President: Faye Nelson
5801 Barham Siding Road
Wake Forest, NC 27587
919-554-0817

Vice President: Teresa Mobley
% Privette Insurance Agency
PO Box 116
Rolesville, NC 27571
919-556-6471

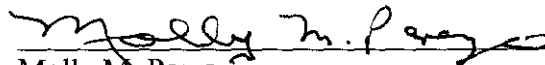
Secretary: Jo Anne Horton
733 Rolesville Road
Rolesville, NC 27571
919-570-5501

Treasurer: Scott Reece
% CCB
PO Box 68
Rolesville, NC 27571
919-556-6432

CERTIFICATE OF SERVICE

I, Molly M. Parezo, a secretary in the law offices of Koerner & Olender, P.C., do hereby certify that a copy of the foregoing “**Comments of Franklin Broadcasting Co., Inc.**” was served this 12th day of April, 2002, via first class mail, postage prepaid upon the following:

Wade H. Hargrove, Esq.
David Kusher, Esq.
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
P.O. Box 1800
Raleigh, NC 27602


Molly M. Parezo